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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/825,997

Applicant(s)

GENTILE, ROBERT

Examiner

Gabriel L. Chu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. **Claims 1-52 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has amended each independent claim to include subject matter stating, in summary, that a single reboot occurs after the detection of a corrupt BIOS, further putting forth that such an amendment finds support in Applicant's figure 1.

First, looking plainly at figure 1, while step 20 discloses a reboot after a validity check, and further does not appear to disclose that the reboot of step 20 may occur any more than once, there is no specific illustration that this is limited to "once" (defined as "one time and no more"). For instance, is Applicant disclaiming any future attempt at booting the system? May the system no longer be shut down if the user ever wants to use it again?

Clearly, Applicant intends for this amendment to mean that no other reboot may occur between the BIOS invalid state 12 and the program BIOS flash and Reboot 20. However, there is no such illustration present in figure 1. Nor is there any description in

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Applicant's specification that supports such a negative limitation, just as there is no description or illustration in the application that supports such "once" language. While "once" is not "no" or "not", it is exclusory language as it excludes operations that are not only one time. As stated in MPEP 2173.05(i), "The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement."

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1-14, 24-48 rejected under 35 U.S.C. 102(e) as being anticipated by US 6314455 to Cromer et al.** Referring to claim 1, Cromer et al. discloses during one boot cycle, determining whether a BIOS of a computer system is corrupt (From figure 4, 412.);

continuing with a normal boot if said BIOS is not corrupt (From figure 4, 410.);

if said BIOS is corrupt: initializing components in a boot block of said computer system sufficient to establish a communications connection with a recovery server,

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locating said recovery server, communicating to said recovery server by sending system information to said recovery server in a request for an uncorrupted BIOS (From figure 4, 412, 422.);

in response to said request to said recovery server, downloading an uncorrupted version of said BIOS from said recovery server based on said system information (From figure 4, 424.);

programming said uncorrupted BIOS onto said computer system's BIOS storage area (From figure 4, 426.);

5. Referring to claims 2 and 33, Cromer et al. discloses one of said components is a network card. (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.")

rebooting said computer system once after determining that said BIOS is corrupt, said rebooting occurring after said programming (Figure 4, 410.).

6. Referring to claims 3, 11, 26, and 34, Cromer et al. discloses said computer system has a local area network (From line 45 of column 3, "FIG. 1 illustrates a pictorial

representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.”).

7. Referring to claims 4, 12, 27, 35, 43, although Cromer et al. does not specifically disclose said computer system connects to said recovery server over a wide area network, connecting over a WAN is notoriously well known in the art. Examiner takes official notice for wide area networks. A person of ordinary skill in the art at the time of the invention would have been motivated to connect to a server over a WAN because it provides connectivity over a wide geographic area. Further, from line 58 of column 3, “A “network” may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network.”

8. Referring to claims 5, 9, 13, 28, 31, 36, 39, 44, 47, although Cromer et al. does not specifically disclose said computer system connects to said recovery server over the internet, connecting over the internet is notoriously well known in the art. Examiner

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takes official notice for the internet. A person of ordinary skill in the art at the time of the invention would have been motivated to connect to a server over the internet because it provides up to global connectivity. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel.

However, the preferred embodiment is implemented utilizing an Ethernet network."

9. Referring to claims 6, 37, 45, although Cromer et al. does not specifically disclose one of said components is a modem, including a modem in a computer system is notoriously well known in the art. Examiner takes official notice for modems. A person of ordinary skill in the art at the time of the invention would have been motivated to include a modem in a computer system because it allows a computer to access a communications medium, such as a cable network or telephone lines, for data communications. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

10. Referring to claim 7, although Cromer et al. does not specifically disclose said computer system connects to said recovery server over a direct dial connection, connecting a computer by dialing into a network is notoriously well known in the art. Examiner takes official notice for dial-up connections. A person of ordinary skill in the art

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at the time of the invention would have been motivated to use dial-up a connection to connect to a server because he or she would have been able to connect wherever there is a telephone connection. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

11. Referring to claims 8, 30, 38, 46, although Cromer et al. does not specifically disclose said computer system connects to said recovery server through an internet service provider, connecting to a server over an ISP is notoriously well known in the art. Examiner takes official notice for ISPs. A person of ordinary skill in the art at the time of the invention would have been motivated to connect to a server using an ISP because ISPs provide access to the internet, a global communications network that interconnects networks of various design. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

12. Referring to claim 10, Cromer et al. discloses during one boot cycle,
determining whether a computer system BIOS is corrupt (From figure 4, 412.);
if said BIOS is corrupt: receiving at a server a request for an uncorrupted version
of said BIOS transmitted by a computer system with a corrupted version of said BIOS

detected during startup (Figure 4, 412, 422.);

in response to said request, transmitting an uncorrupted version of said BIOS to said computer system (Figure 4, 424.),

wherein said computer system reboots once after determining that the BIOS is corrupt, said rebooting occurring after said computer system programs said uncorrupted version of said BIOS onto said computer system's BIOS storage area (Figure 4, 410.).

13. Referring to claim 14, although Cromer et al. does not specifically disclose said server and said computer system are connected through said computer system's modem, connecting through a modem is notoriously well known in the art. Examiner takes official notice for a modem. A person of ordinary skill in the art at the time of the invention would have been motivated to connect using a modem because modems are devices of extremely common inclusion in modern day computer systems, designed for data communications with another computer system. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

14. Referring to claim 24, Cromer et al. discloses a computer system, said computer system comprising a processor, a BIOS recovery program, a BIOS storage area containing said BIOS, RAM, a first communications system and a chipset to control the flow of data between the processor, the motherboard bus and the RAM (Figure 2.);

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and a recovery server, said recovery server comprising a processor, a storage medium, and a second communications system (Figure 1, 100, wherein the server is capable of processing, storing, and communicating.);

wherein said processor of said computer system, in response to detecting a corrupt version of said BIOS detecting during startup and during the same boot cycle in which the corrupt version of said BIOS was detected, executes said BIOS recovery program to: initialize in a boot block of said computer system, said chipset, RAM, and first communications system; locate said recovery server, communicate to said recovery server through said first and second communications systems by sending system information to said recovery server in a request for an uncorrupted BIOS (Figure 4, 412, 422.);

in response to said request with said recovery server, download from said recovery server an uncorrupted version of said BIOS based on said system information (Figure 4, 424.);

store said uncorrupted version of said BIOS into said BIOS storage area (Figure 4, 426.);

and reboot said computer system, and wherein said computer system reboots once after said detecting a corrupt version of said BIOS, said rebooting occurring after said uncorrupted version of said BIOS is stored into said BIOS storage area (Figure 4, 426, 428, 402, 403, 404, 406, 408, 410.).

15. Referring to claim 25, Cromer et al. discloses said first and second communication system are network cards (From line 45 of column 3, "FIG. 1 illustrates

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a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.”).

16. Referring to claim 29, although Cromer et al. does not specifically disclose said first and second communication systems are modems, using a modem in a computer to connect to another computer with a modem is notoriously well known in the art.

Examiner takes official notice for modems. A person of ordinary skill in the art at the time of the invention would have been motivated to connect using a modem because modems are devices of extremely common inclusion in modern day computer systems, designed for data communications with another computer system. Further, from line 58 of column 3, “A “network” may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network.”

17. Referring to claim 32, Cromer et al. discloses a computer system, said computer system comprising a processor, a bus, a BIOS recovery program, a BIOS storage area

containing said BIOS, RAM, and a first communications system and a chipset to control the flow of data between the processor, the bus and the RAM (Figure 2.);

wherein said computer system's processor, in response to detecting a corrupt version of said BIOS during startup and during the same boot cycle during which the corrupt version of said BIOS was detected, executes said BIOS recovery program to: initialize in a boot block of said chipset of said computer system, RAM, and said first communications system, locate a recovery server, communicate to said recovery server through said first communications system by sending system information to said recovery server in a request for an uncorrupted BIOS (Figure 4, 412, 422.);

in response to said request to said recovery server, download from said recovery server an uncorrupted version of said BIOS based on said system information (Figure 4, 424.);

store said uncorrupted version of BIOS into said BIOS storage area (Figure 4, 426.),

reboot said computer system, wherein said computer system reboots once after said detecting a corrupt version of said BIOS, said rebooting occurring after said uncorrupted BIOS is stored into said BIOS storage area (Figure 4, 426, 428, 402, 403, 404, 406, 408, 410.).

18. Referring to claim 40, Cromer et al. discloses a recovery server, said recovery server comprising a processor, a memory containing an uncorrupted version of a BIOS in a boot block for a computer system; and a first communications system (Figure 1, 100, wherein server is capable of processing, stores at least a flash image for

transmission, and is capable of communicating.);

wherein said recovery server, in response to receiving a request transmitted by said computer system during the same boot cycle in which a corrupted version of said BIOS is detected (Figure 4, 412.),

is configured to transmit said uncorrupted version of said BIOS to said computer system (Figure 4, 412, 422, 424.),

and wherein said computer system reboots once after said detecting of a corrupted version of said BIOS, said rebooting occurring after said computer system programs said uncorrupted version of said BIOS onto said computer system's BIOS storage area (Figure 4, 426, 428, 402, 403, 404, 406, 408, 410.).

19. Referring to claim 41, Cromer et al. discloses one of said components is a network card. (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.").

20. Referring to claim 42, Cromer et al. discloses said computer system has a local area network (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a

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data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.”).

21. Referring to claim 48, Cromer et al. discloses a computer system, said computer system comprising a BIOS and components sufficient in a boot block to enable recovery of an uncorrupted BIOS from a remote server (Figure 2.);

wherein said computer system, in response to detecting a corrupt version of said BIOS during startup and during the same boot cycle in which the corrupt version of said BIOS was detected, (Figure 4, 412.),

is configured to operate said components to: connect to communicate to a remote server by sending system information to said remote server in a request for an uncorrupted BIOS (Figure 4, 412, 422.);

as a result of said request with said remote server, receive an uncorrupted version of said BIOS from said remote server (Figure 4, 424.);

store said uncorrupted version of said BIOS (Figure 4, 426.),

wherein said computer system reboots once after said detecting a corrupt version of said BIOS, said rebooting occurring after said uncorrupted version of said

BIOS is stored (Figure 4, 426, 428, 402, 403, 404, 406, 408, 410.).

Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. **Claims 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6314455 to Cromer et al. in view of JP409258965A to Aoki.** Referring to claim 15, Cromer et al. discloses during one boot cycle, checking whether a BIOS of said computer system is corrupt (Figure 4, 412.);

continuing with a normal boot if said BIOS is not corrupt (Figure 4, 410.);

if said BIOS is corrupt: initializing components in a boot block of said computer system sufficient to establish a communications connection with a recovery server, locating a recovery server, communicating to said recovery server by sending system information to said recovery server in a request for an uncorrupted BIOS (Figure 4, 412, 422.);

in response to said request to said recovery server, transmitting an uncorrupted version of said BIOS; receiving said uncorrupted version of said BIOS at said computer system (Figure 4, 424.);

program said uncorrupted version of said BIOS onto a BIOS storage area of said computer system (Figure 4, 426.),

wherein said computer system reboots once after said checking determines that said BIOS is corrupt, said rebooting occurring after said executing (Figure 4, 410.).

Although Cromer et al. do not specifically disclose that utility software can be transmitted to the client and executed to program the BIOS, sending a flash update utility along with the flash update is known in the art. From Aoki, "A host station 1 transmits an update program obtained by previously changing the operation and the version of the program to the base station 2." A person of ordinary skill in the art at the time of the invention would have been motivated to send a flash update utility because, from Aoki, "an update program [is] obtained by previously changing the operation."

24. Referring to claim 16, Cromer et al. discloses one of said components is a network card. (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.").

25. Referring to claim 17, Cromer et al. discloses said computer system has a local area network (From line 45 of column 3, "FIG. 1 illustrates a pictorial representation of a data processing system including a plurality of client computer systems 104 coupled to a server computer system 100 utilizing a hub 102 in accordance with the method and system of the present invention. Server computer system 100 is connected to a hub 102 utilizing a local area network (LAN) connector bus 106. Respective client systems 104 also connect to hub 102 through respective LAN busses 106. The preferred form of the network conforms to the Ethernet specification and uses such hubs. It will be appreciated, however, that other forms of networks, such as token ring, may be utilized to implement the invention.").

26. Referring to claim 18, although Cromer et al. does not specifically disclose said computer system connects to said recovery server over a wide area network, connecting over a WAN is notoriously well known in the art. Examiner takes official notice for wide area networks. A person of ordinary skill in the art at the time of the invention would have been motivated to connect to a server over a WAN because it provides connectivity over a wide geographic area. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

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27. Referring to claims 19 and 23, although Cromer et al. does not specifically disclose said computer system connects to said recovery server over the internet, connecting over the internet is notoriously well known in the art. Examiner takes official notice for the internet. A person of ordinary skill in the art at the time of the invention would have been motivated to connect to a server over the internet because it provides up to global connectivity. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

28. Referring to claim 20, although Cromer et al. does not specifically disclose one of said components is a modem, including a modem in a computer system is notoriously well known in the art. Examiner takes official notice for modems. A person of ordinary skill in the art at the time of the invention would have been motivated to include a modem in a computer system because it allows a computer to access a communications medium, such as a cable network or telephone lines, for data communications. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

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29. Referring to claim 21, although Cromer et al. does not specifically disclose said computer system connects to said recovery server over a direct dial connection, connecting a computer by dialing into a network is notoriously well known in the art. Examiner takes official notice for dial-up connections. A person of ordinary skill in the art at the time of the invention would have been motivated to use dial-up a connection to connect to a server because he or she would have been able to connect wherever there is a telephone connection. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

30. Referring to claim 22, although Cromer et al. does not specifically disclose said computer system connects to said recovery server though an internet service provider, connecting to a server over an ISP is notoriously well known in the art. Examiner takes official notice for ISPs. A person of ordinary skill in the art at the time of the invention would have been motivated to connect to a server using an ISP because ISPs provide access to the internet, a global communications network that interconnects networks of various design. Further, from line 58 of column 3, "A "network" may include any type of data communications channel, such as an Ethernet network, token ring, X.10, or X.25. Those skilled in the art will recognize that the invention described herein may be implemented utilizing any type of data communications channel. However, the preferred embodiment is implemented utilizing an Ethernet network."

31. Claims 49, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6314455 to Cromer et al. further in view of US 5319519 to Sheppard et al.

Referring to claims 49, 50, Cromer discloses, in the background, connecting to a conventional recovery source; downloading an uncorrupted version of said BIOS from said conventional recovery source; programming said uncorrupted BIOS onto said computer system's BIOS storage area; and rebooting said computer system, wherein said conventional recovery source is a removable disk (From line 4 of column 2, "POST and BIOS are both typically stored as a single flash image in a storage device such as a flash memory. This image is commonly called the "boot code". If the flash image of POST and BIOS is corrupted, the boot of the system will not be able to be completed. To recover from a defective flash image error, known systems include a boot block. The boot block is storage within the flash memory which includes a small segment of code sufficient to bring the system up, and to read a recovery image from a floppy drive. A diskette must be inserted into the floppy drive which includes a good copy of the flash image. The code stored in the boot block is not typically updated. In order for the system to boot from the boot block, a technician must remove the cover of the computer system, and physically move a jumper coupled to the flash memory. The jumper is utilized to indicate whether a boot will be attempted from the boot block or the main flash memory. The technician then must replace the cover, insert an appropriate diskette in the floppy drive, and restart the computer. The computer will then attempt to boot from the boot block.").

Although, clearly, this passage refers to procedures taken prior to the availability

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of a recovery server, a person of ordinary skill in the art at the time of the invention, in all likelihood, would have been able to understand that if remote data was unavailable (located), and that if the data is still required, local data must be used instead. An example of this common understanding among people of ordinary skill in the art is shown by Sheppard, from line 35 of column 2, "When networks or network software are unavailable, the person must take his data base with him. He can do this by disconnecting his hard disk drive from his PC, transporting his hard disk drive with him, and then reconnecting the disk drive to a computer located at the remote site. Alternatively, the person can up-load his data base to a large number of floppy disks one at a time, transport the floppy disks to the remote site, and then down-load the data base from the floppy disks one at a time onto a computer located at the remote site. Unfortunately, both procedures are cumbersome and time-consuming." A person of ordinary skill in the art at the time of the invention would have been motivated to prepare for the unavailability of a remote data source because, from Sheppard, "When networks or network software are unavailable, the person must take his data base with him."

32. Claims 51, 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6314455 to Cromer et al. in view of JP409258965A to Aoki as applied to claim 15 above, and further in view of US 5319519 to Sheppard et al. Referring to claims 51, 52, Cromer discloses, in the background, connecting to a conventional recovery source; downloading an uncorrupted version of said BIOS from said conventional recovery source; programming said uncorrupted BIOS onto said computer

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system's BIOS storage area; and rebooting said computer system, wherein said conventional recovery source is a removable disk (From line 4 of column 2, "POST and BIOS are both typically stored as a single flash image in a storage device such as a flash memory. This image is commonly called the "boot code". If the flash image of POST and BIOS is corrupted, the boot of the system will not be able to be completed. To recover from a defective flash image error, known systems include a boot block. The boot block is storage within the flash memory which includes a small segment of code sufficient to bring the system up, and to read a recovery image from a floppy drive. A diskette must be inserted into the floppy drive which includes a good copy of the flash image. The code stored in the boot block is not typically updated. In order for the system to boot from the boot block, a technician must remove the cover of the computer system, and physically move a jumper coupled to the flash memory. The jumper is utilized to indicate whether a boot will be attempted from the boot block or the main flash memory. The technician then must replace the cover, insert an appropriate diskette in the floppy drive, and restart the computer. The computer will then attempt to boot from the boot block.").

Although, clearly, this passage refers to procedures taken prior to the availability of a recovery server, a person of ordinary skill in the art at the time of the invention, in all likelihood, would have been able to understand that if remote data was unavailable (located), and that if the data is still required, local data must be used instead. An example of this common understanding among people of ordinary skill in the art is shown by Sheppard, from line 35 of column 2, "When networks or network software are

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Alternatively, the person can up-load his data base to a large number of floppy disks one at a time, transport the floppy disks to the remote site, and then down-load the data base from the floppy disks one at a time onto a computer located at the remote site.

Unfortunately, both procedures are cumbersome and time-consuming." A person of ordinary skill in the art at the time of the invention would have been motivated to prepare for the unavailability of a remote data source because, from Sheppard, "When networks or network software are unavailable, the person must take his data base with him."

Response to Arguments

33. Applicant's arguments filed 14 August 2006 have been fully considered but they are not persuasive. Referring to Applicant's argument that Cromer requires a client computer to reboot several times after detecting an error condition, Examiner believes Applicant has either misconstrued the reference or misinterpreted a term of the art. Rebooting concerns the restart and reload of an OS in a computer. In the pertinent portion of Cromer, the system is *reset*, not rebooted. Concerning booting/rebooting in Cromer, it is only ever done in response to a completed POST, step 410, i.e., "once".

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gabriel L. Chu
Examiner
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